(4)

IN THE HIGH COURT OF JUDICATRE AT JABALPUR

WP No 2360 /1998

PETITIONER

Narayan Prasad Verma,
S/o Babu Lal Verma,
Aged about 58 years,
R/o 1/413 Behind Stadium,
Kata Ward,
Worksing as Head Clerk cum
Officiating Registrar
Durga College,
Raipur

Versus

RESPONDENTS

R1. State of Madhya Pradesh,
Through Secretary
Higher Education,
Vallabh Bhawan,
Bhopal (MP)

R2. Commissioner,
Higher Education,
E-2/84 Mahabir Nagar,
Bhopal (MP)

S3. Principal
Durga College,
Raipur (MP)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(4)

Attested
30/8/19
Adv (01)

Amended
as per orders
dt. 31.7.03.

RESPONDENT NO. 4 STATE OF CHHATTISGARH THROUGH SECRETARY HIGHER EDUCATIN D.K.S. BHAVAN RAIPUR (C.G.)

RESPONDENT NO. 5. COMMISSIONER HIGHER EDUCATIN SCIENCE COLLEGE CAMPUR, RAIPUR (CHHATTISGARH)

Roy
31.7.03.

Kamla Verma
Commissioner JBP.

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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

WRIT PETITION NO. 2360 OF 1998

PETITIONER Narayan Prasad Verma

Versus

RESPONDENTS State of Madhya Pradesh & Others

Present :

Shri R.S. Patel, counsel for the petitioner.

Shri Sanjay S. Agrawal, Govt. Advocate for the State.

Shri Gautam Bhaduri, counsel for respondent No.3.

ORAL ORDER

(Passed on 22nd February, 2007)

The following oral order of the Court was passed

H.L. Dattu, C.J.

An employee working in a private aided educational institution has filed this writ petition under Article 226/227 of the Constitution of India, *inter alia* seeking the following reliefs:

> "i) to quash the impugned order (Annexure P/4) dated 21/05/1998.
>
> ii) to issue a direction to respondents to allow the petitioner to work in the capacity of Head Clerk-cum-officiating Registrar".

2) The facts in brief are :

The petitioner was appointed as Lower Division Clerk in Durga College, which is aided institution. He was promoted as Upper Division Clerk. Subsequently he also worked as Registrar in the said

College from 1-1-1995 till he was retired from service on attaining the age of superannuation.

3) Fundamental Rule 56 before it was substituted by Ordinance No.1 of 1998 was the subject matter of the petition before the Madhya Pradesh High Court. The Indore Bench of Madhya Pradesh High Court after consideration of Rule 56 of the Fundamental Rules was pleased to observe that the Teachers and Class-IV employees are eligible and entitled to continue in service till they attain the age of 60 years and other employees will retire from service on attaining the age of 58 years. Admittedly, petitioner is a Class-III employee. The respondents taking into account the judgment rendered by the jurisdictional High Court and further taking into account the directions issued by the State Government has retired the petitioner on his attaining the age of 58 years by issuing Annexure-P/2 and P/4. It is those orders which are subject matter of this writ petition.

4) Learned counsel appearing for the petitioner vehemently contends before this Court that the respondents were not justified in retiring the petitioner from service on his attaining the age of 58 years and according to him in view of the amended Rule 56 of Fundamental Rules he should have continued in service till the age of 60 years. Therefore, it is submitted that the impugned orders Annexure-P/2 and P/4 are arbitrary, illegal and in violation etc. In addition to his submissions, learned counsel strongly relies upon the observations made by the Apex Court in the cases of **M.P. Pradhan vs. Union of India & Others (AIR 1990 SC 891), Miss Raj Soni vs. Air Officer in Charge Administration & Another (AIR 1990 SC 1305)** and

U. Raghavendra Acharya & Others vs. State of Karnataka and Others (AIR 2006 SC 2145).

5) Per contra, learned counsel appearing for the State Government justifies the impugned orders. The only question that requires to be considered and decided and considered in this petition is, whether the respondents were justified in retiring the petitioner from service on attaining the age of 58 years.

6) The respondents for retiring the petitioner from service have relied upon the dicta of the jurisdictional High Court, wherein it is stated that it is only the Teachers and Class-IV employees are eligible and entitled to continue the service till they attain the age of 60 years and other employees require to be retired from service on attaining the age of 58 years. In order to overcome the observations made by the jurisdictional High Court and to give some benefit to the employees working in the State Government, the Government has issued an Ordinance No.1 of 1998 published in M.P. Rajyapatra (extraordinary) dated 28-5-1998 and the said ordinance is given effect from 31-5-1998. Even before the said ordinance was introduced by substituting Rule 56 of Fundamental Rules, the petitioner was retired from service on attaining the age of 58 years. The petitioner cannot seek any benefit under the amended Rule 56 of the Fundamental Rules, and therefore, in our opinion, the respondents were justified in retiring the petitioner on his attaining the age of 58 years. Therefore, we do not find any irregularity or illegality in the orders passed by the respondents.

7) The reliance placed by the learned counsel for the petitioners on the observations made by the Apex Court would not assist him in any manner whatsoever.

8) For the aforesaid reasons, we are of the opinion that the writ petition is devoid of merits and the same requires to be rejected and accordingly it is rejected.

9) In the facts and circumstances of the case, the parties are directed to bear their own costs. Ordered accordingly.

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge